

AMENDMENT TO SENATE BILL 337

(Amended Language is in Boldfaced Type)

1. Subsection (2) of NEW SECTION 2, relating to falsification of any declaration under penalty of perjury, is amended to read as follows:

(2) A deliberate falsification in any declaration pursuant to this section constitutes the offense of perjury as provided in 45-7-201 **and must be punishable** as the offense of false swearing as provided in 45-7-202. A declaration under penalty of perjury executed in accordance with any provision of this code is not limited to the official proceedings referenced in 45-7-201.

2. Subsection 2 of **Section 4**, which amends Section 72-1-206, MCA, relating to oath or affirmation on filed documents, is further amended to read as follows:

(2) A deliberate falsification therein shall ~~constitute~~ of any document filed with the court pursuant to this section constitutes the offense of perjury or, where applicable
but ~~and~~ **is punishable as** the offense of false swearing.

Montana Code Annotated

Part 2
Perjury and Other Falsification in Official Matters

45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or be punished by a fine of not more than \$50,000, or both.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified must be considered to have been sworn or affirmed.

(5) A person may not be guilty of an offense under this section if the person retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) When the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In that case, it is not necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) A person may not be convicted of an offense under this section when proof of falsity rests solely upon the testimony of a single person other than the defendant.

History: En. 94-7-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-202; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1679, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Witness required to answer questions, 26-2-302.

General time limitations, 45-1-205.

Periods excluded from limitation, 45-1-206.

Definition of knowingly, 45-2-101.

Definition of offense, 45-2-101.

Definition of official proceeding, 45-2-101.

45-7-202. False swearing. (1) A person commits the offense of false swearing if the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made when the person does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing an official function; or

* (c) the statement is one that is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths. *

(2) Subsections (4) through (7) of 45-7-201 apply to this section.

(3) Except as provided in 13-35-240, a person convicted of false swearing shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-203; amd. Sec. 5, Ch. 407, L. 2007.

Cross-References

Deceptive election practices, 13-35-207.

False affirmation in response to elector challenge at school election, 20-20-303.

Assumed business name filings — false swearing, 30-13-218.

Business corporation filings — false swearing, 35-1-428.

UNITED STATES CODE ANNOTATED

TITLE 28

Judiciary and Judicial Procedure

§§ 1651 to 1860

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(Added Pub.L. 94-550, § 1(a), Oct. 18, 1976, 90 Stat. 2534.)